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THE HIGH COURT OF DELHI AT NEW DELHI

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LPA No.550 of 2012 & CM No.13244-47/2012

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Reserved on: 3rd August, 2012

Pronounced on: 24th August, 2012

HONGKONG & SHANGHAI BANKING
CORPORATION LTD.

...APPELLANT

through : Mr. Rajiv Nayyar, Mr. Sandeep
Sethi, Sr. Advocates with Mr. Syed
Naqvi, Mr. P.P. Kanwar,
Advocates

VERSUS

UNION OF INDIA & ANR.

...RESPONDENTS

through: Mr. Sumeet Pushkarna, CGSC
with Mr. Gaurav Verma, Adv. for
UOI
Mrs. Manju Saxena, Respondent
No.2 in person.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice)

1. Manju Saxena, the Respondent No.2 herein, had challenged the action of the appellant (hereinafter referred to as the management) terminating her services with effect from 1.10.2005, by raising an industrial dispute. It was referred to the Central Government Industrial Tribunal-cum-Labour Court (CGIT). The appellant had, inter alia, took the plea that the Respondent No.2 is not a 'workman' covered by the definition as per Section 2(s) of

the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). The learned CGIT examined the aforesaid issue, on the basis of evidence produced before it and also the validity of termination. In its award dated 1.6.2009, the CGIT has held that the Respondent No.2 is a 'workman' and further that termination of her services by the management was also illegal. In the said award, accordingly, the management has been directed to reinstate the Respondent No.2 along with full back wages and other benefits.

2. The management has filed the writ petition challenging the aforesaid Award of the learned CGIT. During the pendency of the writ petition, the Respondent No.2 filed the application under Section 17B of the Act for directions to the management to pay wages to her during the pendency of the writ petition. The last drawn pay of the Respondent No.2, at the time of her termination, was ₹58,330/- per month. Since the requirement of Section 17B stood satisfied, the appellant did not even oppose the application so far as payment at the rate of ₹58,330/- per month is concerned. However, the controversy arose because of the demand of the Respondent No.2 to get the wages at the rate of ₹4,08,310/- per month on the plea that had she been in service, she would have been getting this pay in the year 2009.
3. The learned Single Judge has decided the application vide impugned order dated 27.7.2012 granting the wages, from the date of award till the disposal of the writ petition, at the rate of ₹75,000/- per month. It is this order, to the extent it grants wages more than the last drawn wages of ₹58,330/- per month, which is the subject matter of challenge in the present appeal.

4. A perusal of the order of the learned Single Judge would show that the learned Single Judge has relied upon the following observations contained in the judgment of the Supreme Court in the case of *Narendra Kumar v. Regional Manager, Punjab National Bank & Ors.*, (2009) 14 SCC 219:

“4. The Labour Court vide its order dated 31-12-2007, while allowing the claim in part, has directed the respondents to pay a sum of rupees fifty thousand only (Rs.50,000) by way of compensation in lieu of reinstatement into service. The award passed by the Labour Court was the subject-matter of the writ petition before the High Court at the instance of the workman. The High Court has dismissed the writ petition in limine and thereby has affirmed the award passed by the Labour Court.

5. The learned counsel for the appellant submits that the amount of compensation awarded by the Labour Court in lieu of reinstatement into service vide its order dated 31-12-2007 is meagre and therefore, this Court may exercise its discretion and enhance the compensation awarded by the Labour Court.

6. Ordinarily, we would not have interfered with the concurrent findings of the Labour Court and the High Court. At the same time, we cannot be obdurate to the hard realities of life. In matters of this nature, a humane and pragmatic approach to the various factors, including the steep escalation in prices in the commodity market, the cost of living, the cost of education of children, etc. is required.”

At the same time, it is also directed by the learned Single Judge that Respondent No.2 shall furnish an undertaking to the effect that in case the management succeeds in the writ petition and the award is set aside, the Respondent No.2 shall refund the amount received over and above her last drawn wages.

5. The only question which needs determination by us is as to whether the learned Single Judge, in the facts of this case, could have granted wages which are more than last drawn wages in exercise of the powers of the writ court under Section 17B of the Act. Section 17B makes the following reading:

“17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.”

6. It is clear from a reading of this provision that normally workman, during the pendency of the proceedings, is allowed payment at the rate of last drawn wages. Question as to whether by way of such interim order, benefits better than those contemplated by Section 17B of the Act can be given or not first came up for consideration before the Supreme Court in the case of *Dena Bank v. Kiriti Kumar T. Patel*, (1999) 2 SCC 106 (*Dena*

Bank – I). The Court in that case held that the expression “full wages last drawn” in Section 17B can mean

“(i) wages only at the rate last drawn and not at the same rate at which the wages are being paid to the workmen who are actually working; or (ii) Wages drawn on the date of termination of the services plus the yearly increment and the dearness allowance to be worked out till the date of the award; or (iii) Full wages which the workman was entitled to draw in pursuance of the award and the implementation of which is suspended during the pendency of the proceedings. The first construction gives to the words “full wages last drawn” their plain and material meaning. The second as well as the third construction read something more than their plain and material meaning in those words. In substance these constructions read the words “full wages last drawn” as “full wages which would have been drawn”. Such an extended meaning does not find support in the language of Section 17B. Nor can this extended meaning be based on the object underlying the enactment of Section 17B.”

7. The Court also highlighted the object behind Section 17B by observing that the object of Section 17B is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or the Supreme Court, Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were

terminated and therefore used the words “full wages last drawn”. To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or the Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Therefore, the words “full wages last drawn” must be given their plain and material meaning and they cannot be given the extended meaning.

8. In that case, the High Court had directed payment of wages under Section 17B, as revised including the increments, D.A. etc. which were granted to all the employees pursuant to the 5th and 6th bipartite settlements. The Supreme Court opined that such a direction could not be uphold which was contrary to the plain language of Section 17B of the Act.
9. Thereafter, aforesaid judgment was clarified in *Dena Bank v. Ghanshyam*, (2001) 5 SCC 169 (**Dena Bank – II**). In that case, the High Court had passed the orders in the stay application filed by the management along with the writ petition staying the award of reinstatement as well as back wages subject to payment of the regular pay scale to the workman. The Court held that since this was not an order passed in an application filed by the workman under Section 17B of the Act but in the writ petition while staying the operation of the award, it was competent for the writ court to pass appropriate interlocutory orders having regard to the facts and circumstances of the case and in the interest of justice.

10. In the present case, we are concerned with orders passed in application filed by Respondent No.2 under Section 17B of the Act. Therefore, ratio of *Dena Bank-I* (supra) is directly attracted. No doubt, the Supreme Court observed in *Dena Bank-I* (supra) that an order directing payment of a higher amount to the workman can be made if that direction is considered to be in the interest of justice. However, those observations were in altogether different context. It is a matter of common knowledge that many times last drawn wages, at the time of termination, are totally inadequate and even become less than the minimum wage prevailing by the time award is rendered and the matter comes before the High Court in the writ petition. In that context, the Supreme Court was of the view that the payment at the last drawn wage would be too meagre to sub-serve the purpose for which Section 17B is enacted by the Legislature. After all, the intent behind Section 17B is to relieve, to a certain extent, the hardship that is caused to the workman due to delay in the implementation of the award. It is in the nature of subsistence allowance which is not refundable or recoverable from the workman even if the award is set aside by the High Court or the Supreme Court. In *Dena Bank-I* (supra), the Court categorically noted this objective behind Section 17B of the Act and made pertinent observations, namely,

“Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and, therefore, the words “full wages last drawn”.

11. To read these words to mean wages which would have been drawn by the workman if he/she had continued in service if the order terminating his services had not been passed, since it has been set aside by the award of the labour court or the industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge.
12. We are thus of the opinion that the higher amount can normally be granted to the workman under Section 17B of the Act in those cases where the last drawn wages are so meagre that these would be insufficient to relieve the extent of hardship faced by the workmen and are perceived as much less than even the “subsistence allowance”. That is why normally the Courts have granted minimum wages to the workmen under Section 17B of the Act if the last drawn wages happen to be less than even the minimum wages prevailing at the time when the order under Section 17B are passed.
13. The observations contained in the judgments of Supreme Court in *Narendra Kumar* (supra), again, were in altogether different context. The various factors highlighted by the Court, namely, steep escalation in prices in the commodity market, the cost of living, the cost of education of children are to be judged in the context as to whether the last drawn wages would not be sufficient to take care of these factors. We would also like to add that in the said case, while holding the termination to be bad in law, the Labour Court had granted ₹50,000/- as compensation in lieu of reinstatement. The question was as to whether such a compensation in lieu of reinstatement was adequate. It is in this

context that the Court held that while granting compensation, we cannot be ignorant of the hard realities of life and have to have humane and pragmatic approach and Court should take into consideration the aforesaid factors of escalation in prices of cost of living, cost of education, etc. These observations were not made while dealing with the application under Section 17B of the Act. As far as Section 17B is concerned, the scope of enquiry would be as indicated in *Dena Bank-I* (supra).

14. Respondent No.2 referred to the judgment of Supreme Court in *Hongkong & Shanghai Banking Corporation Ltd. v. Government of India & Anr.*, 2009 (4) Scale 649. That is a judgment in the case of Respondent No.2 herself when the matter was still before the CGIT. On application of Respondent No.2, the CGIT had granted interim relief directing the management to pay a sum of ₹30,000/- per month till the disposal of the case. It is this order which was upheld till the Supreme Court. This would have no bearing on the issue involved before us.
15. Another case relied upon by the Respondent No.2 is a Division Bench judgment of this Court in *Raj Gariha Visham Sadan v. Vijay Kate*, LPA No.571/2006 decided on 13.09.2006. In that case, the Court, following *Dena Bank-I* (supra) and *Dena Bank-II* (supra), held that the writ court has power to grant higher amount than the last drawn wages. In that case also, the observations granting higher wages were in the context of minimum wages as is clear from the following:

“18. The Full Bench of this Court in DDA also adverted to this aspect when it observed in paras 13 and 14 as under:

13. But, socio-economic aspect of wage structure has been adopted in this country with the promulgation of the Industrial Disputes Act, 1947. The Act postulates that no employer can engage industrial labour unless he pays the labour a minimum basis wage and if he cannot pay such a wage he has no right or justification for carrying on the business. The Act aims to assure to every workman engaged in an industry a fair wage and not a wage determined on the principle of supply and demand inasmuch as the legislature was aware of large scale unemployment in this country.

14. The Supreme Court in its decision in Dena Bank-1 and Dena Bank-2 kept alive this basic philosophy inasmuch as the two decisions recognized the power of a Writ Court to award meaningful payment to a workman during pendency of a writ proceedings more than the last drawn wages. The reason is obvious. There may be mismatch between the cost of minimum living when the matter reaches the High Court and the last drawn wages.”

16. Likewise, another judgment of a Single Bench of this Court in *M/s Super Auto Corp v. Government of NCT of Delhi & Anr.*, [W.P.(C) No.4740/2004 decided on 12.03.2008] deals with higher payment than the last drawn wage, when the last drawn wage is less than the minimum wages.
17. When we consider the facts of the present case, in the light of the ratio in the aforesaid judgments, we find that the last drawn wages of Respondent No.2 were ₹58,330/- per month. This is a decent amount for the purposes of Section 17B of the Act. What would be the present salary, if Respondent No.2 would be in service cannot be the consideration as held in Dena Bank cases.

Therefore, it was not a case where the Court should have granted higher wages than the last drawn wages. We thus set aside the impugned order to the extent it grants last drawn wages at the rate of ₹75,000/- per month. Instead, the order is modified by giving a direction that the wages payable under Section 17B would be ₹58,330/- per month.

18. Before we part with, we would like to take note of the passionate plea made by the Respondent No.2 who appeared in person. She submitted that the matter was appearing in the cause list of the learned Single Judge as Regular item No.1 and was already part heard. Though substantial arguments had been heard, the management was not completing the arguments and had taken as many as 12 adjournments. We hope that no unnecessary adjournments would be given to the management by the learned Single Judge and the writ petition shall be decided expeditiously.

ACTING CHIEF JUSTICE

**(RAJIV SAHAI ENDLAW)
JUDGE**

AUGUST 24, 2012
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